

## **Residents and Library Fees**

By Lance M. Werner, Library Law Specialist

Once in awhile it is necessary to go back to the basics, to ask ourselves why we are here with respect to our professions. In this vein, I felt that it would be useful to discuss how Michigan law governs the fees residents' pay for library services.

The imposition of fees for library services has been addressed numerous times in Michigan laws. As it happens, there is a great deal of legal authority against the imposition of resident fees for library services.

Michigan jurisprudence on the establishment and funding of free public libraries predates statehood. Since the beginning of the State, Michigan laws have not only called for the creation of public libraries but have also authorized State subsidization of free public library services for all Michigan residents. Article X, Section 4 of the Michigan Constitution of 1835 provides:

**As soon as the circumstances of the state will permit, the legislature shall provide for the establishment of Libraries, one at least in each township...the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, shall be exclusively applied for the support of said libraries.**

The above language was carried forward in Michigan's next constitution, the Constitution of 1850, in Article XIII, Section 12.

The intent of the Legislature that there shall be *free* library service for all people is evidenced by language found in the City, Village and Township Libraries Act, 1877 PA 164, MCL 397.201 *et seq.* The title of this law indicates that it is an act to:

**...[A]uthorize cities, incorporated villages, and townships to establish and maintain, or contract for the use of, free public libraries and reading rooms...**

Moreover, section 6 of 1877 PA 164, MCL 397.206, states:

**Every library and reading room established under this act shall be forever free to the use of the inhabitants where located...**

Additionally, section 13 of 1877 PA 164, MCL 397.213, provides:

**Notwithstanding a contrary city, village, or township charter provision, a township, village, or city adjacent to a township, village, or city that supports a free public circulating library and reading room under this act may contract for the use of library services with that adjacent township, village, or city.**

In other words, even if a library is established via city charter, it still must maintain its status as a free public circulating library. It is also noteworthy that the language specifically mentions that municipalities that have contracted for library service are entitled to the same services as people that reside within a library's jurisdictional service area.

These sections are still good law today.

Over the years the language concerning the establishment and funding of library services for Michigan residents has changed somewhat from what was articulated in the 1835 Constitution; however, the original intent has endured.

The contemporary constitutional underpinnings for library services is found in Article VIII, Section 9 of the 1963 Constitution, which states in relevant part:

**The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof.**

As with every Michigan constitution and statute since 1835, current law provides mechanisms not only for the creation of public libraries, but also for the State subsidization of free public library services.

The Legislature enacted specific laws to give effect to the "support" language currently found in Article VIII, Section 9 of the Michigan Constitution of 1963. These laws include the Distribution of Penal Fines to Public Libraries Act (Penal Fines Act), 1964 PA 59, MCL 397.31 *et seq.*, and the State Aid to Public Libraries Act (State Aid Act), 1977 PA 89, MCL 397.551 *et seq.* As with the other laws mentioned above, these public acts exhibit legislative intent for free library services.

Section 1 of the Penal Fines Act, MCL 397.31, indicates:

**"Public library" means a library, the whole interests of which belong to the general public, lawfully established for free public purposes...**

Section 6 of the Penal Fines Act, MCL 397.36, provides:

**The penal fine moneys when received by the proper authorities shall be applied exclusively to the support of public libraries and to no other purpose...**

Preference for "free" public libraries is also evidenced by section 2 of the State Aid Act, MCL 397.552, which states:

**"Public library" means a library that is lawfully established for free public purposes by 1 or more counties, cities, townships, villages, school districts, or other local**

**governments or a combination thereof, or by a public or local act, the entire interests of which belong to the general public.**

A legal distinction between residents and non-residents and the imposition of fees can be found in section 11a of the State Aid Act, MCL 397.561a, which indicates:

**A library may charge nonresident borrowing fees to a person residing outside of the library's service area...**

The relationship between library services and fees was recently considered by the Legislature in 2005, in the course of considering SB 512, which was ultimately enacted into law as Public Act 60 of 2005. During legislative deliberations on the bill, a decision was made to omit a provision, the so-called section 12(g), which would have limited access to library services based on monetary considerations. Here again, the Legislature made a conscious public policy decision that library services shall be free to local residents and to the residents of other localities that contract with local public libraries.

Based on these laws and the history of public libraries in Michigan, it is fair to conclude that people residing within a public library's jurisdictional service area (residents) and those residing in contractual service area (persons served by library service contract) are entitled to free library services.

The issue of residents and fees is wholly dependant on the question of what constitutes library service. The question of what constitutes library service is one to be answered by the governing boards of libraries, in accordance with the law, in response to the public and with the assistance of legal counsel.

If you have any questions, ask your library's legal counsel. Additionally, please feel free to contact Lance M. Werner, the library law specialist at the Library of Michigan - by phone at (517) 373-1299 or via e-mail at [wernerl@michigan.gov](mailto:wernerl@michigan.gov) - for further information.